

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EON-NET, L.P.,

**Plaintiff,**

v.

## FLAGSTAR, INC.,

## Defendant.

Case No. C05-2129RSM

## MINUTE ORDER SETTING TRIAL DATE & RELATED DATES

TRIAL DATE		May 11, 2009
Statement of asserted claims and preliminary infringement contentions due		February 27, 2008
Statement of preliminary invalidity contentions		April 2, 2008
Deadline for joining additional parties and amending pleadings		April 13, 2008
Reports from expert witnesses, if any, regarding <u>Markman</u> issues		July 25, 2008
Rebuttal expert reports, if any, regarding <u>Markman</u> issues		August 24, 2008
Joint claim chart due		September 5, 2008
Opening claim construction briefs due (24 page limit)		September 19, 2008
Responsive claim construction briefs due (24 page limit)		October 3, 2008
<u>Markman</u> hearing	at 9:00 a.m. on	October 23, 2008
Reports from expert witnesses under FRCP 26(a)(2) due		November 22, 2008
Rebuttal expert reports due		December 22, 2008
All motions related to discovery must be noted on the motion calendar no later than the Friday before discovery closes pursuant to CR7(d)(3) or CR37(a)(2)(B)		
Discovery completed by		January 21, 2009

<p>1 All dispositive motions must be filed by      2 and noted on the motion calendar no later than the      3 fourth Friday thereafter (<u>see CR 7(d)</u>)</p> <p>4 Settlement conference per CR 39.1(c)(2) held no later than</p> <p>5 Mediation per CR 39.1(c)(3) held no later than</p> <p>6 All motions <i>in limine</i> must be filed by      7 and noted on the motion calendar seven judicial days      8 thereafter pursuant to CR7(d)(2)</p> <p>9 Agreed pretrial order due</p> <p>10 Pretrial conference to be scheduled by the Court</p> <p>11 Trial briefs, proposed voir dire questions, proposed      12 jury instructions, and trial exhibits due</p> <p>13 Length of Trial: [4-7 days]</p>	<p>February 10, 2009</p> <p>March 12, 2009</p> <p>April 11, 2009</p> <p>April 13, 2009</p> <p>April 29, 2009</p> <p>May 6, 2009</p> <p>Jury <u>[Jury Trial (XXX)]</u></p>
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12 These dates are set at the direction of the Court after reviewing the joint status report and  
 13 discovery plan submitted by the parties. All other dates are specified in the Local Civil Rules.  
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 15 If any of the dates identified in this Order or the Local Civil Rules fall on a weekend or federal  
 16 holiday, the act or event shall be performed on the next business day. These are firm dates that  
 17 can be changed only by order of the Court, not by agreement of counsel or the parties. The  
 18 Court will alter these dates only upon good cause shown: failure to complete discovery within  
 19 the time allowed is not recognized as good cause.

20  
 21 If the Markman hearing or trial dates assigned to this matter create an irreconcilable  
 22 conflict, counsel must notify Lowell Williams or Laurie Cuaresma, at 206-370-8521 within 10  
 23 days of the date of this Order and must set forth the exact nature of the conflict. A failure to do  
 24 so will be deemed a waiver. Counsel must be prepared to begin trial on the date scheduled, but  
 25 it should be understood that the trial may have to await the completion of other cases.

## ELECTRONIC FILING

Counsel are STRONGLY ENCOURAGED to electronically file all documents with the Court. Documents filed electronically are instantly filed and the Court has immediate access to the papers. Documents filed in paper form have to be labeled, scanned, and then docketed in the Clerk's Office. That can, and likely will, result in a delay of several days before the document is posted on the docket sheet.

## TECHNICAL ADVISOR

The parties shall, within fourteen days of the date of this Order, confer and inform the Court whether the nature of the invention and the factual/technical issues that are likely to be in dispute justify the appointment of a technical advisor to assist the Court during the claim construction proceedings, and/or the trial of this matter. If the parties believe such an advisor would be helpful to the Court, they shall submit the resumes of three qualified individuals who are willing to serve as a technical advisor in this matter.

## CLAIM CONSTRUCTION PROCEDURES

Prior to submission of the Joint Claim Chart, the parties shall exchange preliminary proposed constructions for each disputed claim term and provide a preliminary identification of any extrinsic evidence that supports a particular construction. If the extrinsic evidence is documentary, a copy shall be provided to the opposing party: if the evidence is testamentary, a brief description of the witness' proposed testimony must be produced. After reviewing the preliminary submissions, the parties shall meet to narrow the disputed issues and finalize the Joint Claim Chart. The Court expects the terms presented in the Joint Claim Chart to be truly in

dispute and further expects that the preliminary disclosures discussed above will help narrow the terms in dispute.

The Joint Claim Chart shall be formatted as provided in the sample chart found at the end of this Order. The Chart must include each party's proposed construction of disputed terms, together with specific references to the relevant portions of the specification and prosecution history on which the party relies and descriptions of any supporting extrinsic evidence. By the time the Joint Claim Chart for each patent is filed, all allegations of infringement must be revealed and the Court will not consider new allegations of infringement without the asserting party showing good cause.

COOPERATION

As required by CR 37(a), all discovery matters are to be resolved by agreement if possible. Counsel are further directed to cooperate in preparing the Joint Claim Chart and final pretrial order in the format required by CR 16.1, except as ordered below.

## EXHIBITS

The original and one copy of any exhibits to be used at the Markman hearing and/or trial are to be delivered to chambers five days before the hearing or trial date. Each exhibit shall be clearly marked. Exhibit tags are available in the Clerk's Office. The Court hereby alters the CR 16.1 procedure for numbering exhibits: plaintiff's exhibits shall be numbered consecutively beginning with 1; defendant's exhibits shall be numbered consecutively beginning with 500. Duplicate documents shall not be listed twice: once a party has identified an exhibit in the pretrial order, any party may use it. Each set of exhibits shall be submitted in a three-ring binder.

with appropriately numbered tabs.

## SETTLEMENT

Should this case settle, counsel shall notify Lowell Williams or Laurie Cuaresma as soon as possible at 206-370-8521. Pursuant to GR 3(b), an attorney who fails to give the Deputy Clerk prompt notice of settlement may be subject to such discipline as the Court deems appropriate.

DATED this 14<sup>th</sup> day of February, 2008.

  
Ricardo S. Martinez  
United States District Judge